



THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Applications of: Senior, Rodney)

CUSTOMER NO.

Serial Nos.: 09/805,950)

27717

11/810,638 ✓)

Title: ELECTRONIC QUANTITY)

PURCHASING SYSTEM)

Date: June 11, 2008)

Group Art Unit: 3625)

Examiner: Mark A. Fadok)

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**PETITION UNDER 37 CFR 1.181 FOR NUNC PRO TUNC PAYMENT OF EXTENSION
OF TIME FEE OR, IN THE ALTERNATIVE, WITHDRAWING THE HOLDING OF
ABANDONMENT**

Sir:

Applicant hereby seeks to properly ensure co-pendency between USSN 09/805,950 (the "Parent" application) and USSN 11/810,638 (the "CIP" application). This Petition relates to Applicant's desire to ensure that the Patent Office properly charges Applicant in the referenced Parent application for an extension of time fee for 3 months in the amount of \$525.00 for a small entity.

BACKGROUND FACTS

The Parent application received a Final Rejection mailed December 13, 2006, and having a 3-month shortened statutory period for reply. Applicant did not respond to the Final Rejection,

06/13/2008 HVUONG1 00000028 191351 11810638

01 FC:2253 525.00 DA
02 FC:2453 770.00 DA
03 FC:1462 400.00 DA

06/13/2008 HVUONG1 00000028 191351 11810638
02 FC:2453 770.00 CR
Adjustment date: 08/29/2008 CKHLOK
06/13/2008 HVUONG1 00000028 191351 11810638
01 FC:2253 525.00 CR

08/29/2008 CKHLOK 00000004 191351 09805950
01 FC:2453 770.00 DA

instead filing the CIP application on June 6, 2007. The filing receipt for the CIP application recognized the claim of priority to the Parent.

Under the patent rules, there are a number of proper courses to establish co-pendency between the Parent and the CIP application, such as filing the CIP prior to the 3-month period due date. Once the 3-month due date has passed, an extension of time fee must be paid in the parent application in order to claim co-pendency. Applicant had on a number of occasions previously authorized the Patent Office to charge any necessary extension of time fees to Applicant's counsel's Deposit Account. However, to Applicant's knowledge, the Patent Office did not charge such fees in this case.

PETITION REQUEST UNDER RULE 181

Applicant in the first instance hereby petitions under 37 CFR §1.181 for *nunc pro tunc* payment of the extension of time fee in the Parent application in order to establish co-pendency with the CIP application. Applicant relies on repeated statements requesting payment of any necessary fees, including specific references to 37 CFR 1.17 for extension of time fees, to be charged to the deposit accounts of Applicant's representatives.

The patent rules state under 37 CFR §1.136(a)(3):

A written request may be submitted in an application that is an authorization to treat any concurrent or future reply, requiring a petition for an extension of time under this paragraph for its timely submission, as incorporating a petition for extension of time for the appropriate length of time. An authorization to charge all required fees, fees under § 1.17, or all required extension of time fees will be treated as a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time under this paragraph for its timely submission. Submission of the fee set forth in § 1.17(a) will also be treated as a constructive petition for an extension of time in any concurrent reply requiring a petition for an extension of time under this paragraph for its timely submission.

The following requests were made during the prosecution of the Parent application:

A. The Fee Transmittal submitted with the initial filing by Applicant's former counsel Ralph A. Dowell on March 15, 2001, was Form PTO/SB/17 including a box checked for "Charge Any Additional Fee Required Under 37 CFR 1.16 and 1.17." (Tab A). It is noted that the Bib Data Sheet prepared by the Patent Office and recording the filing fee does not recognize this request. (Tab B).

B. On July 27, 2001, in response to a Notice to File Missing Parts, a petition for extension of time was filed by Mr. Dowell including the statement "Any deficiencies in the extension of time fees may be charged to Deposit Account No. 04-1577." (Tab C).

C. On July 28, 2004, in response to a first Office Action, a petition for extension of time was filed by Mr. Dowell including the statement "Any deficiencies in the extension of time fees may be charged to Deposit Account No. 04-1577." (Tab D).

D. On February 22, 2005, a Request for Continued Examination (RCE) was filed, and the Transmittal therefor was Form PTO/SB/30 including a box checked for Fees, Other "any deficiencies." (Tab E).

E. Concurrent with the RCE on February 22, 2005, a Supplemental Response to Final Office Action was filed including a petition for extension of time including the statement "Any additional fees may be charged to deposit account 04-1577." (page 16 of the Supplemental Response being included here as Tab F).

F. On September 19, 2005, a Response to Non-Final Office Action was filed along with a petition for extension of time including the statement "The statutory fee of \$60.00 for the 1 month extension is submitted herewith and any deficiencies may be charged to Deposit Account No. 04-1577." (Tab G).

G. On August 31, 2006, Applicant's counsel Brian S. Clise filed a response to a Non-Final Office Action that included the statement "If any other fees are due in connection with this application, the Patent Office is authorized to deduct the fees from Deposit Account No. 19-1351." (page 13 of the response being included here as Tab H).

H. Concurrent with filing the response on August 31, 2006, a Fee Transmittal on Form PTO/SB/17 was filed including the box checked for "Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17." (Tab I).

With respect to the CIP application, a Fee Transmittal on Form PTO/SB/17 was filed with the initial application on June 6, 2006, including the box checked for "Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17." (Tab J).

Accordingly, it is believed that Applicant, by and through its representatives, repeatedly made blanket authorizations to charge any fees in connection with the application, and specific authorizations to charge extension of time fees, to the representatives' deposit accounts. Such authorizations were made in both the Parent and the CIP application. As noted above, the Bib Data form prepared by the Patent Office failed to record and acknowledge the original authorization for fees due under 1.16 and 1.17.

Therefore, Applicant respectfully petitions under 1.181 for *nunc pro tunc* payment of the extension of time fee under 1.17 in order for the date of abandonment of the Parent application to be June 13, 2007, so that co-pendency is proper between the Parent and the CIP applications. Authorization is hereby given to charge Deposit Account No. 19-1351 for a petition fee under 1.182 and 1.17(f) in the amount \$400.00 for the present request, or for any other fees in connection with this filing. In the event said request under 1.181 is granted, authorization is also explicitly given to charge said extension of time fee under 1.17(a)(3) in the amount of \$525.00,

or any other amount deemed proper. Please indicate attorney reference number 54082-TRANS on the account statement.

ALTERNATIVE PETITION REQUEST UNDER RULE 137(b)

In the event the above request under 1.181 is denied, Applicant petitions alternatively under 1.137(b) that the Parent application was abandoned unintentionally, specifically, to revive the above-identified abandoned Parent application due to Unintentional Delay. In accordance with § 1.137(b), Applicants hereby aver that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR § 1.137(b) was unintentional.

The facts above are herein incorporated. Petitioner hereby states that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 137(b) was unintentional. It should be evident that Applicant, by and through its representatives, has always authorized and requested the payment of any fees that should be due to be paid.

Authorization is hereby given to charge Deposit Account No. 19-1351 for a petition fee under 1.17(m) in the amount \$750.00 for the present request for a small entity, or for any other fees in connection with this filing. In the event this request under 1.137(b) is granted, please consider the required "Reply" to be the CIP application.

OTHER REMARKS

As the Parent application was filed after June 8, 1995, no terminal disclaimer is required.

Under MPEP §402.02, Associate Power of Attorney practice has been eliminated. The undersigned counsel, Brian S. Clise, files the present paper under 37 CFR 1.34 as acting in a representative capacity. It is noted that the undersigned was formerly attorney-of-record but a

revocation of such has been filed. Submitted herewith under Tab K is an Affidavit from current attorney-of-record Robert J. Tosti authorizing representative capacity for the sole purpose of filing the present paper before the Patent Office.

Respectfully submitted,

Seyfarth Shaw LLP
131 South Dearborn Street
Suite 2400
Chicago, Illinois 60603
312-460-5000

By


Brian S. Clise

Reg. No. 47,497

UNITED STATES PATENT & TRADEMARK OFFICE
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND												
1 Date of Request: 08/04/08		2 Serial/Patent # 09805,950										
3 Please refund the following fee(s):		4 PAPER NUMBER	5 DATE FILED	6 AMOUNT								
	Filing			\$								
	Amendment			\$								
<input checked="" type="checkbox"/>	Extension of Time (2253)			\$ 525.00								
	Notice of Appeal/Appeal			\$								
<input checked="" type="checkbox"/>	Petition (1462)		06/11/08	\$ 400.00								
	Issue			\$								
	Cert of Correction/Terminal Disc.			\$								
	Maintenance			\$								
	Assignment			\$								
	Other			\$								
		7 TOTAL AMOUNT OF REFUND		\$ 400.00								
		8 TO BE REFUNDED BY:										
10 REASON:		Treasury Check										
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1.181 pet no fee req'd												
11 REFUND REQUESTED BY:												
TYPED/PRINTED NAME: Charlema Grant		TITLE: Atty										
SIGNATURE: /Charlema Grant/		PHONE: X-3215										
OFFICE: OP												
***** THIS SPACE RESERVED FOR FINANCE USE ONLY: *****												
APPROVED: <i>CKH</i>		DATE: 8/29/08										

Instructions for completion of this form appear on the back. After completion, attach white and yellow copies to the official file and mail or hand-carry to: